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Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
Commonwealth of Massachusetts  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

**RE: D.T.E. 03-50 – Annual Audit**

Dear Secretary Cottrell:

Please accept this letter in lieu of comments in the above captioned proceeding on behalf of AT&T Communications of New England, Inc. ("AT&T"), pursuant to the July 8, 2003, letter from Verizon Massachusetts ("Verizon") requesting the Department of Telecommunications and Energy ("Department") amend its requirement for an annual audit of the Performance Assurance Plan ("PAP") to a review that would be conducted on a triennial basis ("*Verizon Letter Request*").

For the reasons further set forth below, the Department should deny Verizon's request to amend the audit requirement. In addition, the Department should amend the audit requirement to allow CLECs to participate procedurally in the annual audit process.

**I. Verizon's Description Of Its Performance Is Overstated And Inaccurate.**

As basis for its request, among other assertions, Verizon points to the Department's March 13, 2003, Letter Order in D.T.E. 99-271 ("*Letter Order*") concerning the 2001-2002 audit by PricewaterhouseCoopers. Verizon claims that "[t]he audit findings reflect Verizon's proven track record of strong performance on wholesale performance audits at both the state and federal level."<sup>1</sup> Verizon's interpretation of the *Letter Order* is not surprisingly self-serving, as Verizon points only to those certain

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<sup>1</sup> *Verizon Letter Request*, at 2.

instances that support its request for relief from the annual audit requirement, while ignoring those findings that support the underlying basis for the annual audit requirement.

Indeed the *Letter Order*, to which Verizon points as support for its request indicates strongly that the annual audit requirement remains necessary and important. In fact, the audit revealed “three instances of material noncompliance.”<sup>2</sup> Although the Department determined that no substantive changes to Verizon’s PAP processes and procedures were required as a result of the audit, it is a stretch of logic for Verizon to assert that the Department’s conclusions that no changes were required in the existing PAP is grounds for further relaxed standards.

The fact that Verizon met minimal requirements in an audit for one year is hardly evidence of a course of compliance. To the contrary, this is exactly why the annual audit exists- to ensure that performance meets the requirements under the PAP guidelines each year. Even with perfect performance, a single audit is insufficient to justify such a dramatic revision in the audit requirement. In the only audit conducted to date, Verizon’s performance was non-compliant in three material instances.

Moreover, to the extent that Verizon’s performance was satisfactory to any extent for the 2001-2002 time period, it is reasonable to assume that its performance was predicated upon the existence of the audit. That is to say that the existence of the audit requirement is a natural incentive to Verizon to perform in accordance with the guidelines. It only follows that the elimination of an annual audit would eliminate that incentive, and leave potential for a substantial decrease in performance.

The audit requirement was not intended to reward Verizon for simply minimal, if not sub-par, compliance with its legal requirements under the PAP. Rather, as the Department stated in its Order in D.T.E 99-271, “should changes in market conditions warrant, the Department may revise its directives concerning audits, and the Department will decide when it is no longer necessary for these audits to be conducted.”<sup>3</sup> Verizon does not argue that there has been a change in market conditions. Instead, it claims only that it has earned relief from the annual audit requirement through its very short period of performance. Verizon’s one audit, nonetheless demonstrating three instances of material breach, is not what the Department intended as circumstances warranting relief from Verizon’s annual audit requirement.

Furthermore, it is important to note that market conditions are changing in Massachusetts, and these changes are compelling support for the Department to retain the

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<sup>2</sup> *Letter Order*, at 2. The results of the PAP audit are confidential, thus CLECs are privy neither to the nature of the specific instances of non-compliance, nor the means of resolution. Nor can CLECs comment on whether CLECs agree that “no substantive changes to Verizon’s PAP processes and procedures were required as a result of Verizon’s material non-compliance uncovered in the audit.” *Id.*

<sup>3</sup> D.T.E. 99-271, *Order Adopting Performance Assurance Plan*, September 5, 2000, at 33.

annual audit requirement. The Department's recent finalization of UNE rates in Massachusetts will bring a new level of competition that will mean that Verizon's systems and processes for Massachusetts will be tested for the first time. For example, AT&T recently entered the Massachusetts residential market with its UNE-P product, and is still testing expanded UNE products that have yet to be introduced. To do away with the annual PAP audit provision before a substantial record of performance and audited results can be accumulated is not in the interest of Massachusetts consumers. As the development of competition in Massachusetts has reached a critical juncture, now is not the time to ease the incentives for Verizon to provide quality wholesale services that are crucial to competition.

## **II. The PAP Audit Is Essential To Ensuring That Verizon Provides Reliable Data**

In its September 5, 2000, D.T.E. 99-271, *Order Adopting Performance Assurance Plan*, the Department determined that Verizon's proposal to make the annual audit optional, rather than mandatory, was unreasonable.<sup>4</sup> The Department's reasoning in reaching such a conclusion in the *Order* is no less apropos today than it was then. Namely, the Department found Verizon's proposal for an optional audit unreasonable "because it does not provide a reasonable assurance that Verizon's data are being produced and reported in a consistent and reasonable manner, and therefore does not meet the FCC standards."<sup>5</sup> (internal quotation marks omitted). As further discussed below, competitive local exchange carriers ("CLECs") require accurate data in order to determine, with any reasonable degree of confidence, Verizon's compliance with the PAP guidelines. Thus the annual audit requirement provides indispensable incentive for Verizon to ensure that CLECs will receive reliable data.

## **III. Rather Than Eliminate The Annual Audit Requirement, The Department Should Expand The Audit To Allow For Procedural Participation By CLECs**

Rather than approve Verizon's request to eliminate the annual audit requirement, the Department should expand the scope of the audit in Massachusetts, as is the case in New Jersey and Pennsylvania, to include CLECs in the process. AT&T periodically receives information from its sales and marketing teams describing instances in which Verizon has provided its retail customers with service that is superior to that provided to AT&T on a wholesale basis. In order to confirm the veracity of these claims of discrimination with any degree of certainty, CLECs require data beyond that supplied through Verizon's self-reporting. Accordingly, not only should the Department reject

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<sup>4</sup> *Id.*, at 32.

<sup>5</sup> *Id.*

Verizon's request to eliminate the annual audit requirement, it should expand the annual audit to allow for procedural participation by CLECs.

**IV. The Recent Audit of Verizon's Performance in New Jersey Documented Substantial Non-compliance**

As further grounds to support its request, Verizon claims a "proven track record of strong performance on wholesale performance audits at both the state and federal level."<sup>6</sup> One need look no further than the very recent audit conducted in New Jersey, the draft findings of which were released on June 7, 2003, to see that Verizon's claim is grossly overstated. In fact, rather than demonstrate evidence of strong performance, the New Jersey audit instead revealed significant shortcomings. For example, the auditor, The Liberty Consulting Group's draft report ("*Liberty Report*"), a copy of which is attached electronically hereto, made findings characterizing Verizon's performance failures, which included specifically:<sup>7</sup>

There were very few cases in which Liberty found that Verizon's documentation provided a complete and accurate description of the methods and processes it uses to calculate and report performance results and incentive payments.

...

Liberty found numerous cases in which Verizon's performance reporting contained errors or required change to be consistent with the [New Jersey Carrier-to-Carrier Performance Standards and Reports].

...

Verizon is not in compliance with the [New Jersey Board of Public Utilities's] ordered [Incentive Plan] in that Verizon does not provide the calculations and details necessary to prove that the payment amounts are correct. In addition, Verizon could not produce information that would provide conclusively that it correctly credits CLEC bills for incentive payments. Moreover, Verizon has not audited this important aspect of wholesale performance assurance.

In sum, the *Liberty Report* determined that there were eleven (11) instances where Verizon's practice or method "is clearly inconsistent with the [PAP] Guidelines," where correction of the 'item' could cause a change in Verizon's reported results or incentive payments.<sup>8</sup> Moreover, there were thirty-six (36) additional instances where Verizon's methods may be in error or inconsistent with the guidelines.<sup>9</sup>

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<sup>6</sup> *Verizon Letter Request*, at 2.

<sup>7</sup> *Liberty Report*, at 9-10.

<sup>8</sup> *Id.*, at 10-15.

<sup>9</sup> *Id.*

There can be no question that, in the absence of such an audit, these findings relative to Verizon's performance would not have otherwise been revealed. The findings from the New Jersey audit alone demonstrate the need to retain the annual audit requirement in Massachusetts.

Moreover, in addition to New Jersey, additional jurisdictions continue to maintain annual audits of Verizon's performance with respect to accordant PAP guidelines. For instance, Verizon Maryland recently filed its request to the Public Service Commission of Maryland specifically requesting that the Commission select Liberty Consulting Group as the auditor for the current annual audit.<sup>10</sup> As grounds for its request, Verizon confirmed that Liberty would additionally be performing an audit of its performance under the Virginia PAP. Accordingly, as confirmed by Verizon's request, other jurisdictions continue to closely monitor Verizon through annual PAP audits.

**V. The DTE Should Not Remove the Annual Audit Provision Because Massachusetts Lacks a Process By Which CLECs Can Replicate Verizon's Data**

Verizon claims as support for its *Letter Request*, that "[u]nder the New York PAP, CLECs can ask for an audit of Verizon performance results and payment plan if areas of concern arise," and that the New York Public Service Commission ("NYPSC") has not exercised its jurisdiction under this provision in response to CLEC requests for an audit.<sup>11</sup> The crucial information that Verizon has failed to include in its obtuse portrayal of the NY PAP is that CLECs in New York have requested that an independent third-party auditor be assigned to perform the annual audit. Thus, based on the CLECs' individual experiences, they believe that an audit would be informative and beneficial. The NYPSC did note that "there is value in assuring the accuracy of performance reporting," and elsewhere in the Order required Verizon to provide it and the CLECs Structured Query Language ("SQL") algorithms in recognition of the fact that the CLECs must have access to sufficient information regarding Verizon's data to perform meaningful replications thereof. Efforts in New York are ongoing to ensure that CLECs are provided the requisite information to be used for its stated purpose. Similarly, because Massachusetts lacks an effective replication vehicle, the Department should reject Verizon's attempt to relax the annual audit provision.

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<sup>10</sup>Letter to Felicia Greer, Executive Secretary, Public Service Commission of Maryland, from David A. Hill, July 30, 2003.

<sup>11</sup> Verizon Letter Request, at 2.

**VI. Verizon's Proposal To Receive Performance Amnesty For 2003 And 2004 Is Untenable**

Verizon proposes that the Department order that the next audit not be performed until 2005, and cover only that year. Accordingly, Verizon would have absolutely no accountability for PAP performance during both 2003 and 2004. By way of analogy, posit that the IRS informed tax payers that it would not be conducting audits for taxes paid during this same time period- imagine what the likely success rate would be relative to the payment of income taxes, given the complete lack of enforcement incentive. If Verizon was granted such an amnesty period, it would essentially be given 'free rein' for two years. Moreover, this requested two-year amnesty would essentially be based only upon Verizon's satisfactory based upon the performance of only one year (which nonetheless had three instances of material non-compliance). Granting Verizon two years of *carte blanche* could be potentially disastrous, and CLECs would have absolutely no means of recourse.

**VII. Conclusion**

For the foregoing reasons, the Department should deny Verizon's request to eliminate the annual PAP audit requirement. In addition, the Department should expand the scope of the annual audit to allow and provide for the procedural inclusion of CLECs.

Please feel free to contact me with any questions or concerns in this regard.

Yours truly,

Jeffrey Fialky

Enclosure (electronic only)